



Appeal Decision

Site visit made on 27 August 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/C1435/W/24/3336396

Sandfold, Common Lane, East Sussex, Selmeston BN26 6SX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Roy Lock against the decision of Wealden District Council. The application Ref is WD/2023/1954/O.
 - The development proposed is a single self-build dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline, with all matters reserved apart from access. I have determined the appeal on this basis.
3. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement (WMS), which is a material consideration, the proposed changes to the Framework can only be given limited weight at this stage, given that no final document has been published. The main parties have been provided with an opportunity to comment on these documents and their responses have been taken into account, where received.
4. The reasons for refusal did not allege any harm to flood risk. The Council has since drawn my attention to surface water mapping information and now considers that the proposal would result in such harm. The main parties have had the opportunity to provide further representations on this matter. I have taken these into account and am satisfied that no party's interests have been prejudiced by my doing so.

Main Issues

5. The main issues are: whether the proposal would be in a suitable location for housing; the effect of the proposal on flood risk; and the effect of the proposal on protected species.

Reasons

Suitable Location

6. The appeal site is a grassed area of land with shed, close to the dwelling of Sandfold. It is on Common Lane, set back some distance from the highway. The proposal seeks outline planning permission for the erection of a self-build dwelling.

7. The appeal site is located outside of nearby settlement boundaries such that it is within the open countryside. Policies GD2 and DC17 of the Wealden Local Plan 1998 (the WLP) seek to prevent residential development outside of settlement boundaries unless any of the exceptions listed in the supporting text to Policy DC17 are met. There is nothing substantive before me to suggest that the proposal would comply with any of those listed exceptions.
8. The Framework seeks to avoid development of isolated homes in the countryside, subject to certain exceptions. It has been established that in this context the term isolated should be given the ordinary meaning. Given the proximity of the appeal site to Sandfold, the proposal would not represent an isolated home. This is, however, a separate consideration from the accessibility of services. In this regard, Policy WSC6 of the Wealden Core Strategy Local Plan 2013 (the CS) sets out categories of rural settlement which relates to their respective roles and functions. The hierarchy seeks to direct additional development to those settlements taking account of the services and facilities they provide.
9. On the evidence, the appeal site is located some 500m in a straight line from the settlement of Selmeston, and some 1.3km in a straight line from the settlement of Berwick Station. I observed these settlements and their services during my visit, to include a church, village hall, pub, petrol station, and associated convenience store at Selmeston and a village hall, pub, post office and petrol station at Berwick Station. However, I found that overall this provided limited facilities to support day to day living needs.
10. The appellant's Transport Statement, in addition to depicting the services available at these neighbouring settlements, outlines the various public transport links, including the bus stops at both settlements and the railway station at Berwick Station that would provide links to other, larger settlements and services from these locations. Nevertheless, I found the accessibility from the appeal site to these neighbouring settlements and their associated services and transport links to be limited.
11. While the journey to both Berwick Station and Selmeston would be possible along Common Lane, this does not benefit from street lighting or footpaths and has the potential for passing traffic at speeds of up to 60 miles per hour. Although a network of public rights of way also surround the site, the sections of these in the vicinity of the site are uneven, narrow, and unlit. Overall, it would be an unsuitable option for wheelchair users, people with limited mobility or those travelling with pushchairs to access Selmeston or Berwick Station via Common Lane or the public rights of way. In addition, future occupiers of the proposal would be unlikely to undertake this journey on foot or by bicycle at night or during poor weather conditions.
12. Based on my observations there would therefore be limited opportunity for future occupiers of the proposal to access adequate services and facilities for day to day living, or indeed transport links, by means other than private vehicle. While opportunities to maximise sustainable transport will vary between urban and rural areas, and even acknowledging the type and location of the proposed development, it remains that there would likely be an unduly heavy reliance on private vehicles arising from the proposal due to the nature of the journey required from the site to the services or further transport links.

13. For the reasons given, the proposal would be in a suitable location for housing. As such, it would fail to comply with Policies GD2 and DC17 of the WLP and Policies SPO7, SPO8, and WCS6 of the CS in this regard and insofar as they seek to encourage reduction of need to travel by car and support sustainable growth.

Flood Risk

14. The appeal site lies within Flood Zone 1, suggesting a low probability of flooding. However, the Environmental Agency mapping shows that, with regard to surface water flooding, part of the site is at high risk. This risk is at the southern perimeter, being a section of access track from Common Lane. While the dwelling itself would not be located in an area shown as being at risk of surface water flooding, no records show surface water flooding in the vicinity of the site, and alternative pedestrian access is possible, it remains that there is nothing substantive before me to confirm that such a risk of surface water flooding does not exist at this section of the site, which would be included in the wider residential use of the site associated with the proposed dwelling.
15. The Framework aims to direct development away from areas at highest risk through a sequential test, taking into account all sources of flood risk. It is clear development should not be permitted if there are reasonable available sites in areas with a lower risk of flooding. This is supported by Planning Practice Guidance, which refers to avoiding, so far as possible, development in current and future medium and high flood risk areas, considering all sources of flooding including areas at risk of surface water flooding.
16. National policy and guidance is therefore clear that, in the case of the proposal, a sequential test should be undertaken to determine if there are other reasonably available sites, with a lower probability of flooding. These are sites in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development, and which do not need to be owned by the applicant. Even where a Flood Risk Assessment shows that development can be made safe throughout its lifetime, the sequential test will still need to be satisfied. No substantial evidence of such a sequential test is within the submitted Flood Risk Assessment.
17. In accordance with the Framework, buildings for use as dwelling houses are considered to be 'more vulnerable' land uses with regard to flood risk. In this regard, Planning Practice Guidance acknowledges that Flood Zone 1 is an accepted location for 'more vulnerable' development subject to an exception test. However, explanatory notes outline that this does not show the application of the sequential test, which should be applied first to major and non-major development to guide development to areas of lower flood risk.
18. I therefore find that there is insufficient information to determine whether the requirements of the sequential test have been satisfied and that it has not been demonstrated that the proposed development cannot be located in an area that is at a lower risk of flooding. I acknowledge the various mitigation proposed by the Flood Risk Assessment, and the fact that the access track is currently utilised by the residents of the Sandfold dwelling. Nevertheless, this does not remove the need for an appropriate sequential test to be carried out.
19. For the reasons given, the proposal would result in harm with regard to flood risk. As such, it would fail to comply with the Framework in this regard.

Protected species

20. The site is in an amber impact risk zone for great crested newts (GCN). An ecological impact assessment and mitigation strategy has been submitted by the appellant. This outlines that the appeal site is of low habitat quality for GCN, being short, regularly managed semi-improved grassland, which I observed on my visit. While a patch of native species scrub was also to be removed as part of the proposal, it has been confirmed that this is no longer the case. On this basis, the appellant has suggested a non-licenced method statement and precautionary working approach, with no licence.
21. However, the assessment confirms GCN are present in two ponds in close proximity to the site, being one adjacent to the northeast boundary and one some 15 metres to the north. It is stated that these ponds would not be affected during the site works. Nevertheless, I find that it remains that there is potential for dispersal and presence of GCN on site due to the proximity of these ponds.
22. The ecological impact assessment and mitigation strategy further highlight potential impact from pollution, run off, and dust entering the ponds, and the risk of killing and injury resulting from GCN seeking shelter under stored building materials that, without mitigation, could give rise to moderate negative impacts at site level. A non-licenced method statement is provided, along with details of habitat enhancement and monitoring. However, the Council has raised reasonable concerns with regard to the effectiveness of the mitigation proposed, including the potential for temporary fencing to cause damage and disturbance.
23. Natural England's standing advice is that no licence is required if on balance the proposed activity is reasonably unlikely to result in an offence. On the basis of the information available, and even acknowledging the findings of the appellant's assessment and mitigation strategy, I cannot conclude that this would be the case, particularly due to the close proximity of ponds with a GCN presence. In addition, although the appellant states that if GCN are found during development all work will cease immediately, and if no solution can be found to negate any impacts a European Protected Species Licence may be required from Natural England, there is not sufficient information before me to conclude that the licence application would meet the required tests.
24. For the reasons given, the proposal would result in harm to protected species. As such, it would fail to comply with the general aims of Policy WCS12 of the CS insofar as it seeks to ensure habitats are maintained and wildlife is sustained.

Other Matters

25. The proposal would provide an additional housing unit, which would contribute to the housing mix and supply of the area, which attracts positive weight in favour of the development. However, its single dwelling nature limits the overall weight that I can attach to this. The scheme would lead to some temporary economic benefit during construction, including employment possibilities, in addition to longer term economic support to the area. However, given the scale of the development and the time-limited construction period, this benefit attracts limited weight.
26. The appellant states that the property would be self-build, for which there is notable support and an acknowledged unmet demand in the area. I further acknowledge that where insufficient permissions have been given to meet demand in accordance with the statutory duty, this is a material consideration in favour of

granting permission. However, I have nothing before me such as a planning obligation to secure the property as self-build. As it is not clear how certain matters relating to self-build housing could be adequately secured through a planning condition, a planning obligation would be the most appropriate method to secure this. This therefore limits the weight that I can attach to the benefit of the proposal being self-build. I note the appellant has referred to other appeal decisions relating to self-build dwellings and the weight attached to this benefit. However, these schemes were for a greater number of self-build dwellings than the proposal.

27. I note the ecological enhancement measures proposed, which would be a benefit of the scheme. The proposal would incorporate a woodland management plan as part of such enhancements. However, the woodland falls outside of the appeal site, and there is uncertainty as to how a planning condition relating to this could be enforced. While the appellant suggests a planning obligation would come forward in respect of the woodland management, no such obligation is before me. This therefore limits the weight I can give to this element of the enhancements.
28. The appeal site is near the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC). However, as I am dismissing for other reasons I have not considered these matters further. The appeal site also lies some 80m from the Selveston Conservation Area (the CA). The main parties agree that the proposal would not adversely affect the setting of the CA. Based on my observations, I have no reason to disagree.

Planning Balance and Conclusion

29. The proposal would result in harm due to the appeal site not being a suitable location for a dwelling, and with regard to flood risk and impact to protected species. There would be conflict with Policies GD2 and DC17 of the WLP and Policies WCS6, WCS12, SPO7, and SPO8 of the CS. It remains that the proposal would not accord with the development plan as a whole.
30. However, the main parties agree that the Council cannot demonstrate a five year housing land supply. Therefore, in accordance with paragraph 11(d) of the Framework, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 to paragraph 11(d) is clear that this includes areas at risk of flooding. The harm identified with regard to flood risk is such that the policies in the Framework relating to this matter provide that clear reason for refusing the development. As a result, the presumption in favour of sustainable development does not apply.
31. I have outlined the benefits of the proposal above, which even when taken together are not sufficient to outweigh the harm identified. My findings in this regard would not be altered had I found no adverse effect on the SPA and SAC or had I found the site to be previously developed land.
32. For the reasons given, I conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR